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July 16, 2001

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ARMINIA PENAFLORES v. CITY OF SAN DIEGO, et al.
SAN DIEGO SUPERIOR COURT CASE NO. GIC744503

INTRODUCTION

The City of San Diego and three City employees recently prevailed in a whistleblower lawsuit brought by a former employee of the Parking Management Division of the Transportation Department. This case previously came before City Council during closed session on March 6, 2001, for informational purposes, and then again on May 1, 2001, in response to a settlement demand.

FACTS

Plaintiff began her employment with the City in 1996, as a temporary worker in the police department clerical pool. She accepted a permanent position as a Clerical Assistant II in 1998. In January 1999, Plaintiff was promoted to a Word Processing Operator in the Internal Affairs unit of the police department. One year later, she transferred to Parking Management to accept a position as a Public Information Clerk.

From the beginning of her assignment at Parking Management, Plaintiff had difficulty interacting with some of the department staff. She was not receptive to some of the initial training that was provided for her, and wanted to do things her own way. On several occasions Plaintiff became verbally hostile with citizens who called on the phone or who arrived at the front counter in the Parking Management office.

It became apparent to Plaintiff's supervisors that she was not fitting in well to her new job. Plaintiff herself stated that the job was more stressful than she had anticipated and that she planned to transfer out of the department. Towards the end of her 60-day probationary period, her supervisors decided to fail her on probation and send her back to the police department, a place where Plaintiff admittedly liked working. Unfortunately, the probationary failure was not

Honorable Mayor and City Council
July 16, 2001
Page 2

documented in writing at the time it occurred. It was done orally, out of concern for Plaintiff, so that she would not have any negative reference in her personnel file.

Plaintiff believed she had been fired, not failed on probation, so she did not immediately report to the police department. One week later, after discussions with several employees, including her personnel analyst, she reported to her new assignment at the police department. However, upon arrival she complained of chest pains and was taken by two co-workers to the hospital. Plaintiff was examined and released to return to work without restrictions. She never returned to work, though, and was eventually terminated by the police department for job abandonment.

Plaintiff alleged that the personnel action taken against her, whether construed as a termination or as a failure of probation, was done in retaliation for her whistleblowing activities. She maintained that she discovered and disclosed various acts of wrongdoing in Parking Management, acts ranging from the maintenance of a "slush fund" to the wrongful retention of overpayments. Plaintiff claimed that she reported these acts to supervisors, City officials, and other government agencies. However, these "reports" were made after she was failed on probation.

CIVIL TRIAL

The case proceeded to a jury trial before Superior Court Judge S. Charles Wickersham. Plaintiff sought \$100,000 in lost wages, and \$200,000 in compensation for her emotional distress. After a six-day trial in San Diego Superior Court, the jury returned a unanimous verdict on all counts in favor of the City and the three City employees.

Deputy City Attorney Mark Stiffler tried the case on behalf of the City of San Diego and the three City employees.

Respectfully submitted,

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